

UTILITY COMMITMENT AGREEMENT

This Utility Commitment Agreement (this "**Agreement**") is made and entered into this _____ day of _____, 2013 to be effective as of June 1, 2013 (the "Effective Date") by and between Eagle Mountain City, a municipal corporation of the state of Utah ("**City**") and Granite Construction Company, a California corporation ("**Granite**") with its principal place of business at 585 West Beach Street, Watsonville, California 95076 ("**Granite**"). The City and Granite may be referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, JD VI, LLC ("**Owner**") owns certain property located in Eagle Mountain City, which property is located within the Spring Run Annexation Area and more particularly described on attached **Exhibit A** (the "**Property**");

WHEREAS, Granite recently obtained approval from the City to construct facilities on a portion the Property for asphalt and aggregate operations (the "**Asphalt Plant**") which is depicted in the Site Plan attached hereto as **Exhibit B**;

WHEREAS, the Property did not have natural gas or electric utilities available in the immediate vicinity of the Property;

WHEREAS, Owner and Granite requested that the City construct electric and natural gas infrastructure to the Property in order to service the Asphalt Plant; and

WHEREAS, City agreed to construct the natural gas and electric infrastructure to the Property provided that Granite guarantees a certain amount of usage over a period of time in order to enable the City to recoup some of the cost of constructing the infrastructure.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises and agreements set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. City's Commitment.

(a) **Facilities.** The City shall construct and maintain an eight (8) inch underground natural gas line from the City's current gas infrastructure to the edge of the Property (the "**Gas Line**"), and construct and maintain a three-phase underground 6000 kW electric line from the City's current electric infrastructure to the edge of the Property (the "**Electric Line**"), as generally depicted on **Exhibit C**. The City shall also construct and maintain a six (6) inch high pressure natural gas line (the "**High Pressure Line**") to supply peak flows to the Asphalt Plant. The City currently anticipates construction of the High Pressure Line during the summer of 2013, which completion expected by August 31, 2013. The Gas Line, Electric Line and High Pressure Line shall be collectively referred to as the "**Facilities**."

(b) Supply of Electric Energy and Natural Gas. Subject to paragraph 7 below, City shall provide and sell to Granite sufficient electrical energy and natural gas to supply the total requirements for the Asphalt Plant at such operating levels as Granite shall determine from time to time in its sole discretion. The Parties acknowledge and agree that City may require Granite to limit its consumption of peak flow gas until such time as the High Pressure Line is completed.

2. Granite's Commitment to Purchase Gas and Electricity. In consideration for the City constructing the Facilities following completion of the Facilities, Granite hereby commits to purchase from City 107,900 Dekatherms of natural gas and 1,683,500 kW-Hours of electricity prior to the expiration of the date occurring (the "Commitment Amount"). Granite estimates but does not guarantee that the Commitment Amount will be achieved by Granite using at least the following amounts of natural gas and electricity during the indicated twelve-month period, commencing on the Effective Date (each, a "Contract Year").

Natural Gas Consumption Estimate:

Contract Year	Dekatherms / Year
First	13,000
Second	19,500
Third	23,400
Fourth	26,000
Fifth	26,000

Electricity Consumption Estimate:

Contract Year	kW-Hrs. / Year
First	196,000
Second	297,500
Third	350,000
Fourth	420,000
Fifth	420,000

The Parties agree that Granite is only committing to purchase the total Commitment Amount by the end of the fifth Contract Year (i.e., May 30, 2018), and not committing to purchase a certain amount in each Contract Year. Nothing set forth herein shall be construed to limit the amount of electrical energy or natural gas that Granite may purchase for use in the Asphalt Plant.

3. **Payment of Guaranteed Amount.** At the end of the fifth Contract Year, if the amount of natural gas or electricity purchased from City by Granite or from third party suppliers by Granite for use in the Asphalt Plant is less than the total Commitment Amount, City shall provide to Granite an accounting of the total amount of natural gas and electricity utilized by Granite (the “**Accounting**”). If Granite fails to utilize the total Commitment Amount for electricity, within sixty (60) days of receipt of the Accounting, Granite shall pay to the City the difference between the amount of electricity utilized by Granite and the total Commitment Amount multiplied by \$0.034/kW-hr. If Granite fails to utilize the total Commitment Amount for natural gas, within sixty (60) days of receipt of the Accounting Granite shall pay to the City the difference between the amount of natural gas utilized by Granite and the total Commitment Amount multiplied by \$6.72/dekatherm (together, the “**Commitment Payment**”). Granite or its representatives shall have the right to examine the records of City to the extent reasonably necessary to verify the accuracy of the Accounting.

4. **Performance Bond.** Within thirty days of the execution of this Agreement, Granite shall provide to the City a performance bond by a Surety acceptable to the City in substantially the form set forth on Exhibit E, to guarantee Granite’s performance of this Agreement. The Performance Bond shall be in the amount of the \$782,327.00, which is equal to the rates for gas and electricity set forth in paragraph 4 times the Commitment Amount. At Granite’s request, City shall reduce the performance bond at the end of each Contract Year based on Granite’s use of gas and electricity during that Contract Year. In no event shall the Performance Bond be construed to limit Granite’s obligation to the Commitment Payment, and City shall not be obligated to make demand on the Performance Bond prior to bring an action against Granite to enforce Granite’s commitments and obligations set forth herein.

5. **Electric Rates.** Granite shall pay City on a monthly basis for all electricity at the City’s normal electric rate set forth in the City’s Consolidated Fee Schedule for similar users, including all Service Charge, Demand Charge, and Energy Charges included in such rate.

6. **Natural Gas Rates.** The rate the City charges Granite for natural gas shall include all of the following:

a. The Customer Charge for Large Industrial Users set forth in the City’s Consolidated Fee Schedule (currently \$378.60);

b. A per dekatherm charge equal to the average monthly cost of gas paid by the City for its supply of natural gas, including any taxes or other fees paid by the City (the “**Blended Rate**”). The City currently purchases natural through an agreement with British Petroleum. The City will calculate Blended Rate by dividing the total amount the City is charged by British

Petroleum in each calendar month for natural gas deliveries by the total dekatherms of gas used by the City in that calendar month; and

c. A surcharge of \$1.00 per dekatherm.

7. **Natural Gas Nominations.** On or before the fifteenth day of each calendar month proceeding any calendar month in which Granite anticipates operating the Asphalt Plant, Granite shall provide the City with its anticipated natural gas usage for the following month.

8. **Restriction on Utility Supply.** In the event the City is required to comply with any restriction or limitation on the City's use of natural gas or electricity that is not caused by the negligence or willful misconduct of City, the City may impose similar restrictions on Granite's use of natural gas or electricity. In such event, the parties shall equitably adjust the Commitment Amount to account for such restriction or limitation.

9. **Failure of Utility Service.** City shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Property, and no such failure or interruption shall entitle Granite to terminate this Agreement or offset any amount to be paid to City, unless such failure or interruption was caused by the negligence or willful misconduct of City. Notwithstanding the foregoing, if for any reason not attributable to Granite the City is unable to provide the Estimated Consumption Amount in any Contract Year, the Commitment Amount shall be reduced by the difference between the amount provided by the City in any given Contract Year and the Estimated Consumption Amount in any Contract Year.

10. **Term.** Except for Granite's commitments in paragraph 3 of this Agreement, the term of this Agreement shall begin on the Effective Date and shall end on May 30, 2018.

11. **Compliance With Law.** Granite shall at all times comply with all applicable laws, regulations and ordinances of the City.

12. **Events of Default.** The occurrence of any one or more of the following events shall constitute a default by a Party and a breach of this Agreement:

12.1 Failure to pay any invoice for electric or gas service within thirty (30) days of the date that such invoices are due and receipt of written notice from City of such failure; or

12.2 Failure to perform or observe its obligations under any other provision of this Agreement which failure shall continue for a period of thirty (30) days after written notice, unless any such failure occurs more than thrice in any calendar year, in which case such failure shall immediately constitute a default.

13. **Notices.** Where notice is required to be given, it shall be by certified mail return receipt requested, hand delivery or courier. Said notice shall be sent to the following as applicable:

GRANITE:

Granite Construction Company
Attn: Branch Manager
1000 North Warm Springs Road
Salt Lake City, UT 84116

CITY:

Eagle Mountain City
Attn: Fionnuala Kofoed, City Recorder
1650 E. Stagecoach Run
Eagle Mountain, Utah 84005

Notice shall be effective at the close of business on the day it is actually received, if received during business hours on such day, and otherwise effective at the close of business on the next business day. A Party may change its address by providing notice of such change in accordance with this paragraph 12.

14. **Costs and Attorney Fees.** Notwithstanding anything to the contrary provided herein, should legal action be necessary to enforce, construe, cancel, terminate, rescind or recover for the breach of the provisions of this Agreement, the prevailing Party shall be entitled to recover all costs of suit, including reasonable attorneys' fees incurred therein and herewith.

15. **Construction.** In construing this Agreement, and in determining the rights of the Parties hereto, no Party shall be deemed to have solely drafted or created the Agreement.

16. **Force Majeure.** Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of the Party or its suppliers, that prevent the Party from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

17. **Assignment.** This Agreement and any interest herein, or any right or obligation arising therefrom, may be transferred or assigned by either of the Parties. Notwithstanding the foregoing, Granite may not assign its commitment in paragraph 6 of the Agreement to maintain a performance bond to guarantee the Annual Commitment without the express written consent of City unless the assignee provides a substitute bond meeting the requirements of paragraph 6 of this Agreement.

18. **Entire Agreement.** The Parties agree that this Agreement constitutes the entire agreement of the Parties hereto with respect to its subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement is intended to replace, supplant, supersede and/or merge all prior oral and/or written agreements, negotiations and/or understandings relating to the subject matters hereof.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah and any action relating to this Agreement or the breach or enforcement thereof shall be brought and maintained in the Fourth Judicial District Court of the State of Utah, Utah County, each of the Parties hereto consenting to the exclusive personal jurisdiction of such courts as if they were personally present in such State.

20. **Execution by Counterpart.** This Agreement may be executed in counterparts and shall be deemed fully executed by the Parties when counterparts hereof have been signed by each of them whether or not signatures of the Parties appear on the original or any one copy of this Agreement.

21. **Facsimile, Electronic and Photocopies of Documents.** Facsimile or electronic transmission of any signed original document and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. Photocopies of any of the foregoing shall also be the same as delivery of an original.

22. **Severability.** The provisions of this Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability; any such portion not enforceable shall not affect the remaining terms of this Agreement; and the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intent of the Parties.

23. **Modification.** This Agreement may not be modified or waived other than in writing signed by all of the Parties bound hereto.

24. **Representation.** The Parties hereby expressly state that each has been counseled that it is desirable to obtain independent counsel regarding the terms of this Agreement and has had the opportunity to be represented by competent counsel, that each has read the foregoing Agreement, knows and understands its contents, has discussed the contents with counsel or has independently determined not to discuss the matter with counsel, and agrees to be bound by its terms.

25. **Headings.** The various headings used in this Agreement are for convenience only and shall not be used in interpreting the text of the section or paragraph in which they appear.

26. **Authority.** Each of the undersigned represents and warrants that he or she has proper authority to enter into this Agreement and to bind such parties and entities as indicated in this Agreement and that the undersigned is not under any contract or agreement that prohibits entering into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have affixed their respective signatures this ____ day of _____, 2013

Eagle Mountain City

ATTEST:

Heather Anne Jackson, Mayor

Fionnuala B. Kofoed, CMC
City Recorder

Granite Construction, Inc.

By: _____

Print Name: _____

Title: _____

Exhibit A

Serial Number: 58:022:0120

Legal Description: COM AT SW 1/4 COR. SEC. 9, T5S, R1W, SLB&M.;
N 0 DEG 32' 58" E 1364.96 FT; S 89 DEG 36' 23" E 2634.49 FT; S 89 DEG 42' 11" E .17 FT;
S 0 DEG 32' 31" E 1350.77 FT; N 89 DEG 54' 57" W 2660.43 FT TO BEG.

AREA 82.472 AC.

Exhibit B

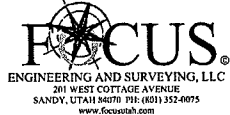
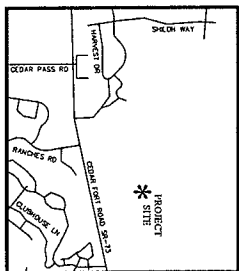
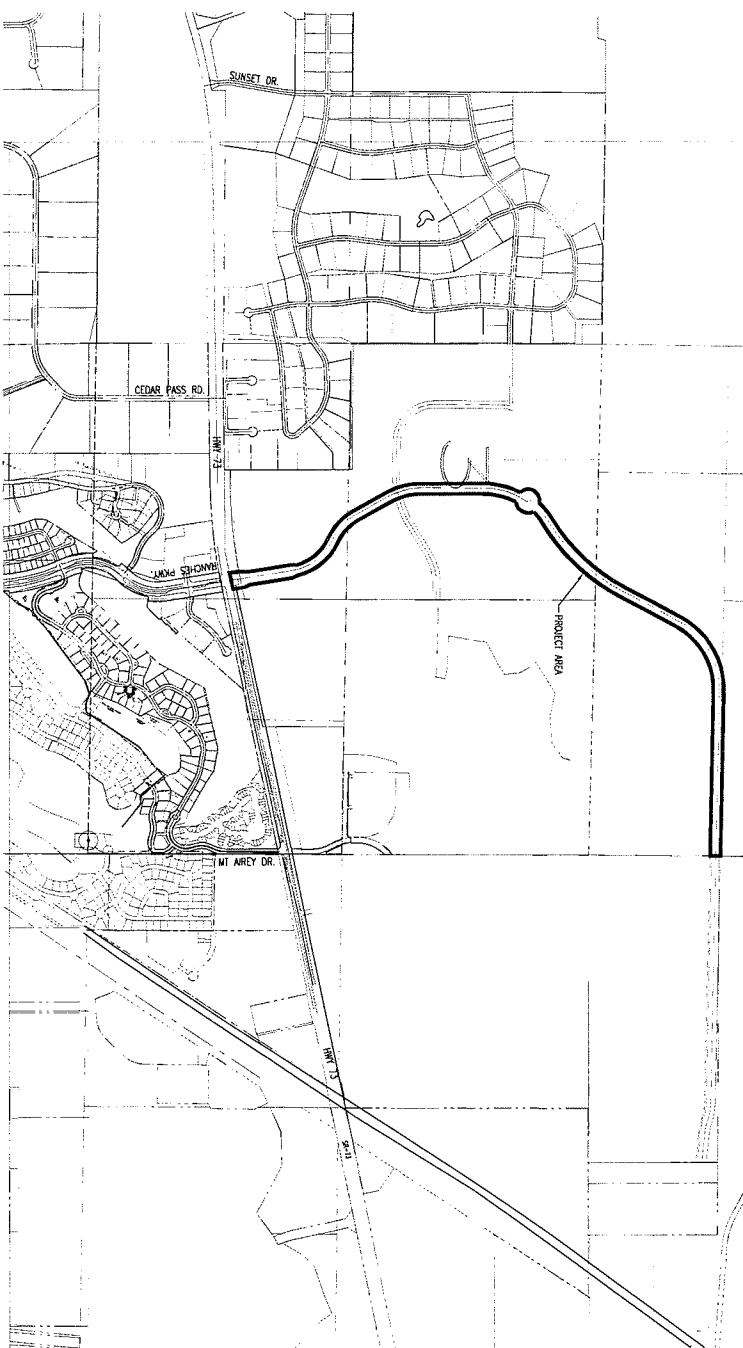
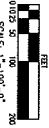
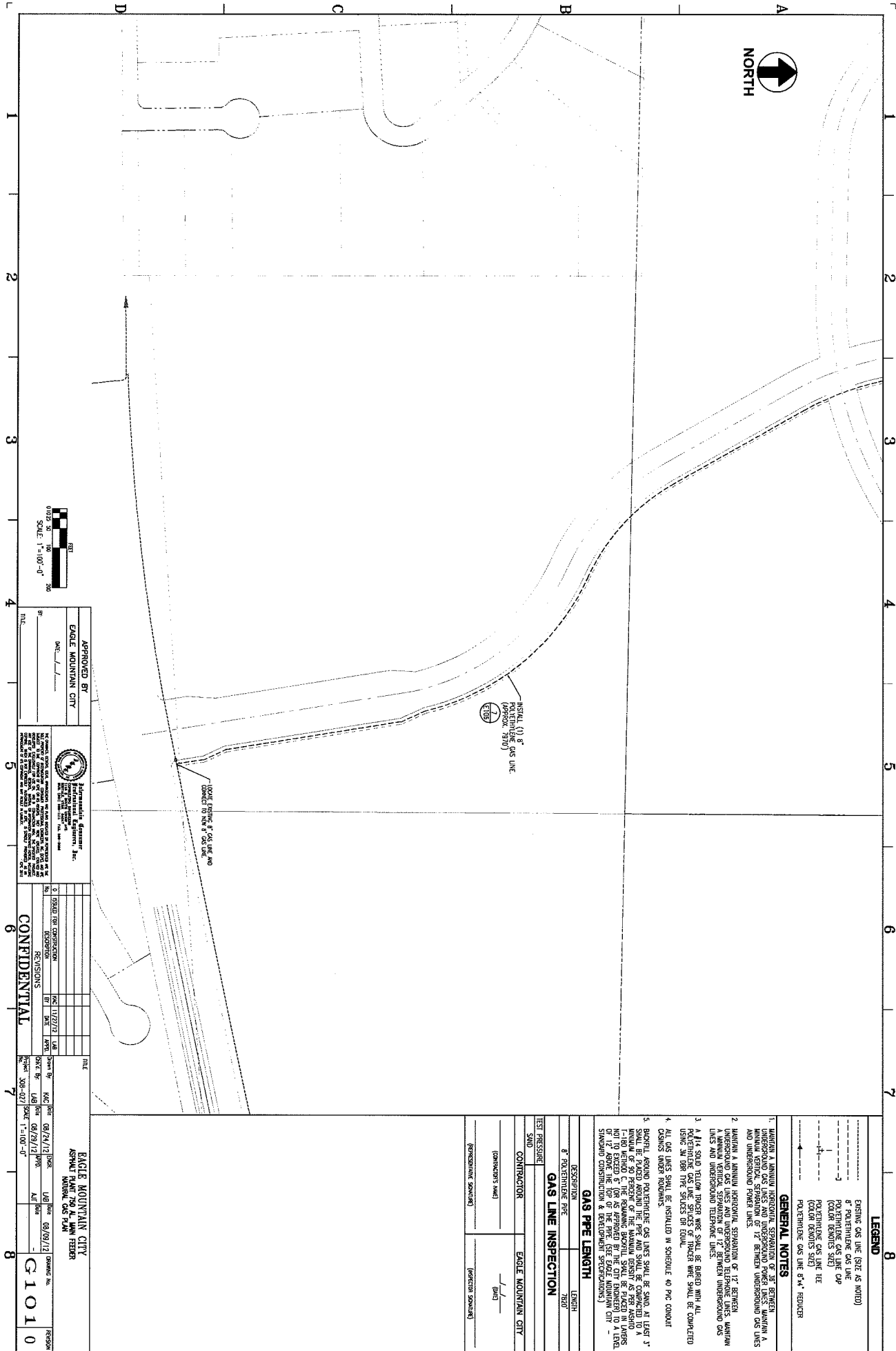


Exhibit C



DRAWING INDEX	
NO.	DESCRIPTION
C080	CONCRETE SHEET
E101	ELECTRICAL PLAN
E102	ELECTRICAL PLAN
E103	ELECTRICAL PLAN
E104	ELECTRICAL PLAN
E105	ELECTRICAL CONSTRUCTION DETAILS
E106	JOINT FRENCH DETAILS
E107	JOINT FRENCH DETAILS
G101	NATURAL GAS PLAN
G102	NATURAL GAS PLAN
G103	NATURAL GAS PLAN
G104	NATURAL GAS PLAN
G101	COSING PLAN
G102	COSING PLAN
G103	COSING PLAN
G104	COSING PLAN

[illegible]



APPROVED BY		EAGLE MOUNTAIN CITY	
DATE		11/27/13	
BY		[Signature]	
TITLE		CITY ENGINEER	
PROJECT NO.		108-027	
SHEET NO.		101	
DATE		06/09/12	
BY		[Signature]	
TITLE		CITY ENGINEER	
PROJECT NO.		108-027	
SHEET NO.		101	
DATE		06/09/12	
BY		[Signature]	
TITLE		CITY ENGINEER	

REVISIONS

NO.	DESCRIPTION	DATE	BY
0	ISSUED FOR CONSTRUCTION	11/27/13	LAB

CONFIDENTIAL

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR CONSTRUCTION	11/27/13	LAB

EAGLE MOUNTAIN CITY
ASPHALT PAVEMENT & SANITARY
MAINTENANCE PLAN

LEGEND

SYMBOL	DESCRIPTION
---	EXISTING GAS LINE (NOT AS NOTED)
---	PROPOSED GAS LINE
---	PROPOSED GAS LINE CAP (COLOR IDENTIFY SITE)
---	PROPOSED GAS LINE TEE (COLOR IDENTIFY SITE)
---	PROPOSED GAS LINE 8" x 4" REDUCER

GENERAL NOTES

1. MAINTAIN A MINIMUM VERTICAL SEPARATION OF 12' BETWEEN UNDERGROUND GAS LINES AND UNDERGROUND POWER LINES, MAINTAIN A MINIMUM VERTICAL SEPARATION OF 12' BETWEEN UNDERGROUND GAS LINES AND UNDERGROUND TELEPHONE LINES.
2. MAINTAIN A MINIMUM HORIZONTAL SEPARATION OF 12' BETWEEN UNDERGROUND GAS LINES AND UNDERGROUND POWER LINES, MAINTAIN A MINIMUM HORIZONTAL SEPARATION OF 12' BETWEEN UNDERGROUND GAS LINES AND UNDERGROUND TELEPHONE LINES.
3. A 1/4" SOLID YELLOW TAPE SHALL BE BURIED WITH ALL UNDERGROUND GAS LINES. THE TAPE SHALL BE PLACED IN LAYERS OF 12" ABOVE THE TOP OF THE PIPE. (SEE EAGLE MOUNTAIN CITY STANDARD CONSTRUCTION & DEVELOPMENT SPECIFICATIONS.)
4. ALL GAS LINES SHALL BE INSTALLED IN SCHEDULE 40 PVC CONDUIT OR GAS LINES UNDER PROTECTORS.
5. BURNED, ROUNDED, POLYETHYLENE GAS LINES SHALL BE SANITIZED BY BURNING AT LEAST 3" ABOVE THE TOP OF THE PIPE. THE BURNING SHALL BE PLACED IN LAYERS OF 12" ABOVE THE TOP OF THE PIPE. (SEE EAGLE MOUNTAIN CITY STANDARD CONSTRUCTION & DEVELOPMENT SPECIFICATIONS.)

GAS PRE LENGTH

DESCRIPTION	LENGTH
8" POLYETHYLENE PRE	750'

GAS LINE INSPECTION

TEST PRESSURE	CONTRACTOR
SAND	EAGLE MOUNTAIN CITY

CONTRACTOR'S NAME
[Signature]

INSPECTION DATE
[Signature]

